

Message Text

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15

ORIGIN STR-04

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 SIG-01 FEA-01 AGR-05

CEA-01 CIAE-00 COME-00 DODE-00 EB-07 FRB-03 H-02

INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05

CIEP-01 SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02

OMB-01 AGRE-00 STRE-00 /114 R

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STATE:JSPIRO/RBRESSLER

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P 212249Z SEP 76

FM SECSTATE WASHDC

TO USMISSION EC BRUSSELS PRIORITY

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

AMEMBASSY STOCKHOLM

USMISSION OECD PARIS

INFO USDEL MTN GENEVA PRIORITY

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E.O. 11652: N/A

TAGS: ETRD, OECD, MTN

SUBJECT: GOVERNMENT PROCUREMENT

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1. WE WISH TO EXPOSE TO EC COMMISSION, CANADA, JAPAN AND SWEDEN THE FOLLOWING ELEMENTS OF OUR THINKING CONCERNING THE OCTOBER 5 MEETING OF THE OECD TRADE COMMITTEE WORKING PARTY ON GOVERNMENT PROCUREMENT. WE WILL NOT SURFACE THESE

ELEMENTS MORE WIDELY, IF AT ALL, UNTIL WE HAVE VIEWS FROM ADDRESSEE POSTS.

2. WE CONSIDER THE SECRETARIAT DRAFT (TC/WP(76)12, DATED JULY 29, 1976) TO THE MTN SUBGROUP ON GOVERNMENT PROCUREMENT TO BE A GOOD REPORT WHICH NEEDS ONLY A FEW SMALL EDITORIAL CHANGES BEFORE TRANSMISSION TO GENEVA.

3. IT WOULD BE USEFUL FOR THE KEY COUNTRIES TO AGREE BEFORE THE MEETING ON TACTICS REGARDING OECD DOCUMENTATION TO BE TRANSMITTED TO THE MTN SUBGROUP. (A) WE PROPOSE THAT THE REVISED GUIDELINE PAPER TO BE PERFECTED AT THIS MEETING OF THE TCWP NOT HAVE THE RIGHT HAND PAGES OF NOTES THAT HAVE CHARACTERIZED ALL GUIDELINE REVISIONS TO DATE. THIS WILL RESULT IN THE SIMPLEST FORM OF DOCUMENT FOR THE MTN SUBGROUP AND MINIMIZE PROBLEMS IN THE SUBGROUP THEREBY. TO THE EXTENT THAT ANYTHING OF IMPORTANCE REMAINS ON THE

NOTE PAGES OR SHOULD BE ON SUCH NOTE PAGES, SUCH ELEMENTS CAN BE CONVEYED TO THE SUBGROUP EITHER AS A PART OF THE REPORT FROM THE TCWP OF THIS MEETING, OR BY REFERENCE TO EARLIER OECD DOCUMENTS, SUCH AS REPORTS OF MEETING OR PAPERS ON INDIVIDUAL PROBLEMS DISCUSSED IN THE TCWP; (B) WE CONSIDER IT IMPORTANT THAT THIS MEETING OF THE TCWP DECIDE THAT THE OECD WILL TAKE THE MOST FORTHCOMING AND COOPERATIVE ATTITUDE TO THE NEEDS OF THE NEW MTN SUBGROUP. WE SHOULD LIKE THE TCWP TO MAKE IT KNOWN TO THE NEW SUBGROUP THAT WE WILL NOT ONLY QUICKLY RESPOND TO THEIR REQUEST FOR A COPY OF THE REVISED GUIDELINES PAPER BUT THAT WE WILL SIMILARLY RESPOND TO A REQUEST FOR ANY OTHER OECD DOCUMENTATION THAT MIGHT BE USEFUL AND APPROPRIATE.

4. SINCE THE LAST BILATERALS WITH THE ADDRESSEE COUNTRIES WE HAVE BEEN DEVELOPING OUR THINKING ON TRANSPARENCY AND THE ALLIED SUBJECT OF SUPPLIER INQUIRY RIGHTS. AS A WORKING HYPOTHESIS WE ARE PREPARED TO CONSIDER A SCHEME WHERE THERE WOULD BE NO PUBLICATION OF CONTRACT AWARDS BUT LIMITED OFFICIAL USE
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THAT GOVERNMENTS WOULD AGREE TO PROVIDE TO UNSUCCESSFUL BIDDERS BOTH THE NAME OF THE WINNING BIDDER AND THE AMOUNT OF THE BID. THE USG BELIEVES THAT THIS COMPROMISE REPRESENTS THE MINIMUM ELEMENTS NECESSARY TO INSURE THE INTEGRITY OF THE GOVERNMENT PROCUREMENT CODE. THE FOLLOWING CONSEQUENTIAL CHANGES IN THE GUIDELINES WOULD THEN SEEM TO BE CONSISTENT WITH OUR BILATERAL CONVERSATIONS TO DATE:

(A) INSERT AT THE VERY BEGINNING OF PARAGRAPH 18:
"PURCHASING ENTITIES SHALL PROVIDE THE TENDER DOCUMENT IN RESPONSE TO A REQUEST FROM BONA FIDE SUPPLIERS AND SHALL RESPOND PROMPTLY AND

FULLY TO INQUIRIES FOR CLARIFICATION OF DETAILS
PRIOR TO THE CLOSING DATE OF THE TENDER."

(B) CREATE A NEW SUBPARAGRAPH 18(3) WHICH WOULD
READ: "SUPPLIERS INTERESTED IN A PARTICULAR
PROCUREMENT SHALL BE ENTITLED TO MAKE INQUIRY
CONCERNING ANY ASPECT OF THE PROCUREMENT AND
BE ASSURED PROMPT RESPONSE TO SUCH INQUIRY."

(C) PARAGRAPH 27 WOULD BE REVISED AS FOLLOWS:
"THE RECEIPT AND OPENING OF TENDERS SHALL BE
MADE BY THE PURCHASING ENTITIES UNDER CONDITIONS
GUARANTEEING THE REGULARITY OF THE PROCEDURE,
SO AS TO TREAT IMPARTIALLY ALL BIDDERS AND NOT TO
HANDICAP OR EXCLUDE FOREIGN BIDDERS. IN CONNEC-
TION WITH OPEN PROCEDURES, PURCHASING ENTITIES
SHALL ESTABLISH PROVISIONS FOR THE OPENING OF

BIDS IN THE PRESENCE OF BIDDERS AND FOR THE
DISCLOSURE TO THOSE PRESENT OF THE NAMES OF
BIDDERS AND PRICES BID."

(D) PARAGRAPH 33 WOULD BE REVISED TO READ: "(A) UPON
REQUEST BY ANY UNSUCCESSFUL BIDDER, THE PURCHAS-
ING ENTITY SHALL INFORM HIM OF THE NAME OF THE
WINNING BIDDER AND THE CONTRACT PRICE. WHEN THE
AWARD IS MADE TO OTHER THAN THE LOWEST BIDDER,
THE PURCHASING ENTITY SHALL ALSO INFORM EACH
UNSUCCESSFUL LOWER BIDDER OF THE REASON FOR HIS
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REJECTION."

"(B) IF AN UNSUCCESSFUL BIDDER BELIEVES THE
EXPLANATION FOR REJECTION OF HIS BID IS UN-
SATISFACTORY OR IF HE HAS FURTHER QUESTIONS ABOUT
THE AWARD OF THE CONTRACT, HE SHALL BE AFFORDED
AN OPPORTUNITY TO QUESTION A DESIGNATED CONTACT
POINT IN THE PURCHASING ENTITY AND SHALL RECEIVE
SUCH ADDITIONAL INFORMATION OR EXPLANATION AS THE
AGENCY DEEMS FEASIBLE TO DISCLOSE."

(E) PARAGRAPH 34 WOULD READ: "IF A PURCHASING ENTITY
IS UNABLE TO PROVIDE TO AN UNSUCCESSFUL BIDDER
THE REQUESTED EXPLANATION FOR REJECTION OF A
BID IT SHALL SO ADVISE THE BIDDER CONCERNED.
THE GOVERNMENT OF THE UNSUCCESSFUL BIDDER MAY
THEN INTERVENE WITH THE GOVERNMENT OF THE PURCHAS-
ING ENTITY TO SEEK SUCH ADDITIONAL INFORMATION ON
THE CONTRACT AWARD AS TO INSURE THAT THE PURCHASE
WAS MADE FAIRLY AND IMPARTIALLY."

(F) PARAGRAPH 35 WOULD READ: "SIGNATORY COUNTRIES MUST HAVE PROCEDURES FOR THE HEARING AND REVIEWING OF PROTESTS ARISING IN CONNECTION WITH ALL PHASES OF THE PURCHASING PROCESS, INCLUDING THE ISSUANCE OF TENDERS, THE PRESENTATION OF CANDIDATURES, THE SUBMISSION OF BIDS, AND THE AWARDED AND ADMINISTRATION OF CONTRACTS. SIGNATORY GOVERNMENTS SHALL ACKNOWLEDGE RECEIPT OF A PROTEST OF THE COMPLAINANT WITHIN TWO WEEKS OF THE DATE OF RECEIPT AND SHALL INITIATE AND COMPLETE A REVIEW OF THE PROTEST IN A TIMELY MANNER."

5. OUR IDEAS FOR FINAL PROVISIONS FOR THE CODE TEXT HAVE NOT FIGURED IN OUR RECENT BILATERALS. IT WOULD BE OUR HOPE THAT THE DRAFT CODE TEXT TO BE MADE AVAILABLE TO THE MTN SUBGROUP WOULD CONTAIN FINAL PROVISIONS. WE THEREFORE ASK YOU TO OBTAIN VIEWS ALSO ON THE FOLLOWING PROPOSALS:

(A) ACCESSION TO CODE - "A STATE NOT SIGNATORY TO LIMITED OFFICIAL USE
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THIS AGREEMENT OR A STATE ACTING ON BEHALF OF A SEPARATE CUSTOMS TERRITORY POSSESSING FULL AUTONOMY IN THE CONDUCT OF ITS PROCUREMENT PRACTICES MAY ACCEDE TO THIS AGREEMENT ON ITS OWN BEHALF OR BEHALF OF SUCH TERRITORY ON TERMS TO BE AGREED ON BETWEEN SUCH STATE AND THE SIGNATORY GOVERNMENTS. DECISIONS OF THE SIGNATORY GOVERNMENTS SHALL BE TAKEN BY A 2/3 MAJORITY." THIS PARAGRAPH IMPLIES THAT PRE-ADHERENCE NEGOTIATIONS ARE FORESEEN TO ENSURE BALANCE OF OBLIGATIONS, INCLUDING PURCHASING ENTITIES SUBJECT TO SCOPE OF CODE AND TO REVIEW OTHER POSSIBLE PROBLEM AREAS SUCH AS TRANSITIONAL ARRANGEMENTS TO PHASE OUT PROCUREMENT PRACTICES INCONSISTENT WITH CODE OR IMPLICATIONS OF MULTIPLE EXCHANGE RATE SYSTEM.

(B) ENTRY INTO FORCE - "THIS AGREEMENT SHALL ENTER INTO FORCE ON THE 60TH DAY FOLLOWING THE DATE WHICH THE INSTRUMENTS OF RATIFICATION, APPROVAL OR ACCESSION, AS APPROPRIATE, FOR THE UNITED STATES, MEMBER STATES OF THE EUROPEAN COMMUNITIES, NORWAY, SWEDEN, AUSTRIA, SWITZERLAND, AUSTRALIA, NEW ZEALAND, JAPAN AND CANADA SHALL HAVE BEEN DEPOSITED."

(C) AMENDMENTS - "AMENDMENTS TO THIS AGREEMENT SHALL BECOME EFFECTIVE, IN RESPECT OF SUCH SIGNATORY GOVERNMENTS WHICH ACCEPT THEM, UPON ACCEPTANCE

OF 2/3 OF THE SIGNATORY GOVERNMENTS AND THERE-
AFTER FOR EACH OTHER PARTY UPON ACCEPTANCE BY IT."

(D) WITHDRAWAL - "AT ANY TIME AFTER THE THIRD YEAR
IN WHICH THIS AGREEMENT HAS ENTERED INTO FORCE
WITH RESPECT TO ANY SIGNATORY GOVERNMENT, SUCH
SIGNATORY GOVERNMENT MAY WITHDRAW FROM THIS
AGREEMENT PROVIDED THAT SUCH SIGNATORY GOVERNMENT
SHALL HAVE GIVEN TO OTHER SIGNATORY GOVERNMENTS
A WRITTEN NOTICE OF INTENTION TO WITHDRAW FROM
THIS AGREEMENT AT LEAST SIX MONTHS BEFORE SUCH
WITHDRAWAL."

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6. FOR OTTAWA: IN EXPOSING THE ABOVE ELEMENTS OF OUR
THINKING TO THE GOC BE SURE THAT JEFF ELLIOT AT ITC AND
DOUG MARSHALL AT FEDERAL SUPPLY ARE ALSO CLUED IN.

7. FOR U.S. MISSION OECD: THIS IS TO KEEP YOU INFORMED AND
PROVIDE A BASIS FOR YOU TO EXPOSE OUR THINKING TO TOM
BERNES.

8. FOR BRUSSELS: IN CONVERSATIONS WITH BRAUN AND
DERISBOURG, TEST RECEPTIVITY OF LATTER TO MEET WITH
POMERANZ IN PARIS ON FRIDAY, OCTOBER 1 TO DISCUSS THESE
AND OTHER ASPECTS OF PROCUREMENT PROBLEM. (FYI - WE
CONSIDER PRE-TCWP BILATERAL WITH COMMUNITY IMPORTANT
ENOUGH SO WE ARE NOT FORECLOSING POSSIBILITY OF A BRUSSELS
STOPOVER IF SCHEDULE PERMITS. END FYI)

9. FOR STOCKHOLM: WE ASSUME THAT CURT WIIK WILL BE ONE
OF THOSE APPROACHED ON THIS MATTER.

10. FOR TOKYO: WE WOULD APPRECIATE IF YOUR APPROACH WOULD
RESULT IN KEEPING KITAJIMA (FOREIGN OFFICE) FULLY AWARE
OF THE ABOVE ELEMENTS.

11. ALL ADDRESSEE POSTS ARE REQUESTED TO REPORT HOST
REACTIONS AS SOON AS POSSIBLE. THIS WILL ENABLE US TO
FINALIZE INSTRUCTIONS FOR U.S. DEL TO TCWP. ROBINSON

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<< END OF DOCUMENT >>

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